KOREA METALS EXPORT CORPORATION & ANOR. v. SAKOTA LTD. S.A.

[A.C.J. (Wee Chong Jin C.J.) May 2, 1973]

[Singapore — Appeal in Suit No. 1678 of 1971]

Practice and Procedure — Writ — Service of — Set aside by Registrar — Whether defendant company resident or carrying on business in Singapore — Whether there was an agent — R.S.C. 1970, O. 62 r. 4.

This appeal was against the decision of the Registrar setting aside the service of the writ on the defendant company, Sakota Limited S.A. The writ was served on October 18, 1972 by leaving a copy of the writ at the registered office of Kie Hock Shipping Co. Ltd. On October 24, 1972 the defendant company entered conditional appearance and on November 3, 1972 took out a summons in chambers to set aside, *inter alia*, the service of the writ on the ground that "Kie Hock Shipping Company ... whose address is given in the citation of the said writ of summons as the Singapore address of the defendant, a Panamanian company, were not, when the said writ of summons herein was issued, nor when the same was purportedly served at the said address, the agents of or in any other business relationship with the defendant company".

The Registrar ordered the service set aside. On appeal, the appellants, relying on R.S.C. O. 62 r. 4, contended that the writ had been validly served. It was submitted that the defendant company had a residence or was carrying on business in Singapore and their agents at the time of service of the writ was Kie Hock Shipping Co. Ltd.

Held, dismissing the appeal: (1) there was no evidence that Kie Hock Shipping Co. Ltd. carried on business or acted in any way as agents or managers of the defendant company after January 1, 1971;

(2) on the evidence, the defendant company was not at the date of service of the writ resident or carrying on business in Singapore.

CIVIL APPEAL.

K. A. O'Connor for the appellants/plaintiffs.

C. S. Wu for the respondents/defendants.

Wee Chong Jin C.J.: This appeal is against the decision of the Registrar setting aside the service of the writ on the defendant company, Sakota Limited S.A., who are the owners of m.v. "Tong Lam" which ran aground off the Philippines on 22nd October 1970 and soon thereafter sank. The vessel was carrying cargo belonging to the plaintiffs'.

On 21st October 1971 the writ in the above action, claiming *inter alia*, damages for negligence in the carriage of goods, was issued and the writ was addressed "To Sakota Limited S.A. c/o Kie Hock Shipping Co. Ltd. 48 Cecil Street, Singapore". Sakota Limited S.A. is a company registered in the Republic of Panama. The writ was served on 18th October 1972 by leaving a copy of the writ at the registered office of Kie Hock Shipping Co. Ltd. which is No. 48 Cecil Street, Singapore. On 24th October 1972 Sakota Limited S.A. entered conditional appearance and on 3rd November 1972 took out a summons in chambers to set aside, *inter alia*, the service of the writ on the ground that "Kie Hock Shipping Company of 48 Cecil Street, Singapore, whose address is given in the citation of the said writ of summons as the Singapore address of the defendants, a Panamanian company, were not, when the said writ of summons herein was issued, nor when the same was purportedly served at the said address, the agents of or in any other business relationship with the defendant company". As stated the Registrar ordered the service set aside.

Mr. O'Connor, for the plaintiffs, submits that the writ has been validly served on the defendant company and relies on Order 62 rule 4 which reads as follows: —

"Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any written law, be effected by serving it in accordance with Rule 3 on the chairman or president of the body, or the secretary, treasurer or other similar officer thereof".

His submission is that the defendant company had a residence or was carrying on business in Singapore and their agents at the time of the service of the writ was Kie Hock Shipping Co. Ltd. whose registered address was No. 48 Cecil Street, Singapore. He relies on the following facts which are contained in several affidavits filed by himself. One affidavit exhibits a copy of a bill of lading signed on 11th October 1970 which establishes that Kie Hock Shipping Co. (Pte) Ltd. [the addition of "(Pte)" being immaterial for present purposes] were the then agents or managers of the defendant company's vessel m.v. "Tong Lam". Also exhibited were letters addressed to the plaintiffs by Kie Hock Shipping Co. (Pte) Ltd. written on behalf of their "principal" the owners of the vessel. These letters were all dated 1970 and it is submitted that Kie Hock Shipping Co. (Pte) Ltd. were clearly until end of 1970 the agents or managers of the defendant company. This fact is not in dispute. However, as appears from an affidavit filed on behalf of the defendant company, Kie Hock Shipping Co. (Pte) Ltd. ceased to carry on business on 31st December 1970 and have since never resumed business although it has not been wound up. Another company, Kie Hock Shipping (1971) Pte. Ltd. which was incorporated on 27th November 1970 took over on 1st January 1971 all the assets, liabilities, goodwill and business, including all outstanding contracts and agreements of Kie Hock Shipping Co. (Pte) Ltd. and since 1st January 1971 the 1971 company have dealt with all matters concerning the loss of m.v. "Tong Lam" including correspondence with claimants arising out of that loss. The correspondence with regard to the plaintiffs' claim was carried on by the plaintiffs' solicitors after the end of 1970 with the 1971 company and in my judgment it must be inferred that the plaintiffs' solicitors were aware as from January 1971 that the 1971 company were thenceforth the agents of the owners of m.v. "Tong Lam" *i.e.* the defendant company and that Kie Hock Shipping Co. (Pte) Ltd. after 1st January 1971 were no longer the agents or managers.

Mr. O'Connor submits, however, that because Kie Hock Shipping Co. (Pte) Ltd. did not give any notice to the plaintiffs that as from 1st January 1971 they were no longer agents or managers of the defendant company in respect of the m.v. "Tong Lam" they must be deemed to be still the agents of the defendant company at the time of the service of the writ on them in October 1972. The authorities he relies on in support are to the effect that a principal, where he has failed to give notice of the revocation or termination of his agent's authority, is precluded from denying that he gave the authority against those who

acted upon the faith that that authority continued. I am unable to accept Mr. O'Connor's submission. There is no evidence, and indeed the evidence points the other way, that Kie Hock Shipping Co. (Pte) Ltd. carried on business or acted in any way as agents or managers of the defendant company after 1st January 1971.

On the submission that the defendant company, having regard to all the facts and circumstances, can be said to be resident in Singapore at the time the writ was served in October 1972 I find on all the evidence before me that the defendant company were not at that date carrying on business in Singapore.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Drew & Napier; Donaldson & Burkinshaw.*

TAN TECK WA v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) May 2, 1973]

[Singapore — Magistrate's Appeal No. 108 of 1972]

Road Traffic — Minibus used as public service vehicle contrary to licence granted and conditions attached — Conviction and forfeiture — No written public service vehicle licence — Road Traffic Act (Cap. 92), s. 53.

This was an appeal against a conviction under section 53 of the Road Traffic Act (Cap. 92) for using a motor vehicle (a minibus) as a public service vehicle otherwise than in accordance with the licence granted in respect of that vehicle and the conditions attached thereto. An order of forfeiture was also made in respect of that vehicle. The appellant appealed against the conviction and the order of forfeiture. The main ground of appeal was that the prosecution had failed to prove that the Registrar of Vehicles, had issued a written public service vehicle licence under the Road Traffic Act in respect of the appellant's vehicle.

Held, dismissing the appeal: (1) on the facts there could be no doubt that the appellant's minibus had been duly granted a licence authorising its use as a private car (school transport) and the appellant had used his minibus otherwise than in accordance with such licence;

(2) where a person is charged with having contravened section 53(1) by reason of his use of a motor vehicle as a public service vehicle otherwise than in accordance with the licence granted in respect of that vehicle there is no necessity for the prosecution to prove the existence of a written licence issued by the Registrar of Vehicles for the use of that vehicle as a public service vehicle.

MAGISTRATE'S APPEAL.

L. M. Ong for the appellant.

Chia Quee Khee (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J.: The appellant was charged and convicted under section 53 of the Road Traffic Act (Cap. 92) of using a motor vehicle as a public service vehicle otherwise than in accordance with the licence granted in respect of that vehicle and the conditions attached thereto. An order of forfeiture was also made in respect of that vehicle. He now appeals against the conviction and the order of forfeiture.

The brief facts are as follows. Motor vehicle No. SCB. 200 is a minibus of which the appellant is the registered owner. He applied for and was granted by the Registrar of Vehicles, who is the appropriate licensing authority, a licence for the use of his motor vehicle as a private car (school transport) *i.e.* for carrying children to and from schools at a fixed or agreed sum. The appellant's said minibus is thus a public service vehicle duly licensed as a "private car (school transport)".

On 6th October 1970 the appellant was stopped by three Traffic Police officers at Nicoll Highway while driving his minibus which had eight passengers in it. At least three of the passengers were paying passengers and they were not school children but were adults. On these facts the appellant, who offered no defence when called on to enter upon his defence, was convicted and an order of forfeiture was made by the trial court.

Section 53(1) of the Road Traffic Act prohibits, *inter alia,* the use of a public service vehicle otherwise than in accordance with the licence granted under Part II of the Act authorising such use and section 53(2) makes it an offence under the Act and provides the penalty for any contravention of section 53(1). Section 53(6) requires a court on the written application by the Public Prosecutor to make an order for forfeiture of a motor vehicle duly seized if it is proved to the satisfaction of the court that it has been used for the commission of an offence under section 53.

The main ground of appeal is that the prosecution had failed to prove that the Registrar of Vehicles had issued a public service vehicle licence under the Road Traffic Act in respect of the appellant's vehicle. The submission is that on the prosecution evidence no such licence was in fact issued because it is the prosecution case that the appellant's application for a licence to use his vehicle as a "private car (school transport)", *i.e.* a section 52(1)(g) public service vehicle, was approved orally and no written licence was ever issued. However, the evidence that the appellant made a written application for such a public vehicle licence and was granted such a licence by the Registrar of Vehicles was not challenged. In my judgment, this ground is without substance. On the facts there can be no doubt that the appellant's minibus had been duly granted a licence authorising its use as a "private car (school transport)" and the appellant had on the 6th October 1970 used his minibus otherwise than in accordance with such licence. Where a person is charged with having contravened section 53(1) by reason of his use of a motor vehicle as a public service vehicle otherwise than in accordance with the licence granted in respect of that vehicle there is no necessity for the prosecution to prove the existence of a written licence issued by the Registrar of Vehicles for the use of that vehicle as a public service vehicle. It is of course necessary to prove, *inter alia,* a grant in respect of that motor vehicle of a licence for its use as a public service vehicle. Accordingly, the appeal against his conviction is dismissed. It follows,